



Secured transactions 2010:  
course outline and reading  
guide

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FACULTY OF LAW  
UNIVERSITY OF TORONTO

# SECURED TRANSACTIONS 2010: COURSE OUTLINE AND READING GUIDE

## LEGEND

CB:	Duggan and Ziegel, <i>Secured Transactions in Personal Property</i> (5 <sup>th</sup> ed.) (Emond Montgomery, Toronto, 2009)
OPPSA:	<i>Personal Property Security Act</i> , R.S.O. 1990, c. P.10
Supp.	<i>Statutory and Supplementary Materials for 2009-2010 Academic Year</i>

## TOPIC 1: INTRODUCTION

### 1. The function of credit; unsecured and secured credit distinguished

CB 1-4

### 2. Pre-PPSA forms of transaction

CB 5-10

- mortgage
- pledge
- lien (charge)
- conditional sale
- lease

### 3. Issues in secured transactions law

CB 4-5

- formal requirements
- registration
- rights of parties between themselves
- third party rights
- default and enforcement



#### **4. The OPPSA and other laws**

CB 16-23

**(a) Origins of the OPPSA (UCC, Article 9)**

**(b) The Western model PPSA**

**(c) Bank Act, s. 427 (see further, Topic 12)**

#### **5. Personal property and its classifications**

OPPSA, s. 1(1) (definitions below)

**(a) “Personal Property”**

**(b) “Goods”**

(i) “consumer goods”

(ii) “inventory”

(iii) “equipment”

**(c) Non-goods tangible personal property**

(i) “chattel paper”

(ii) “documents of title”

(iii) “instruments”

(iv) “money”

(v) “investment property”

**(d) “Intangibles”**

(i) “accounts”

(ii) other types of intangibles (choses in action, IP rights, etc.)

#### **6. Proceeds collateral**

OPPSA, ss 1(1), 25(1)

#### **7. Security interests in circulating assets**

CB 10-12

**(a) The US position (pre-Article 9)**

**(b) The English position**

**(c) The Article 9 and Canadian PPSA position**

**8. Security interests and bankruptcy**

**9. The secured lending puzzle**

- Armour, “The Law and Economics Debate About Secured Lending: Lessons For European Lawmaking?”, CB 23



## TOPIC 2: THE SCOPE OF THE OPPSA

### 1. Security transactions

OPPSA, s. 2

#### (a) Transaction

OPPSA, s. 1(1) “security agreement”, “security interest”

- *Ellingsen (Trustee of) v. Hallmark Ford Sales Ltd.*, CB 81

#### (b) Security interest in “personal property”

OPPSA s.1(1) “personal property”

- *Royal Bank of Canada v. Saulnier* , CB 33

#### (c) In substance security transactions

OPPSA, s. 2(a)(i)

- *356447 British Columbia Ltd. v. CIBC*, CB 95
- *Caisse Populaire Desjardins de l’Est de Drummond v. Canada*, Supp.

#### (d) Security and non-security leases

OPPSA, ss. 2(a)(ii), (c) and 1(1), “lease for a term of more than one year”.

- CB Commentary 55-59

#### (e) Consignments

OPPSA, s.2(a)

- CB Commentary 59-60

## **(f) Assignments**

OPPSA, ss. 2(a)(ii), 2(b), 40

- CB Commentary 9-10

(i) Absolute assignments and security assignments

(ii) Assignments with and without recourse

(iii) Notification and non-notification assignments

## **2. Exclusions from the scope of the Act**

OPPSA, s. 4(1)

(a) Liens given by statute or rule of law

- *Commercial Credit Corp Ltd. v Harry Shields Ltd*, CB 60

(b) Insurance

- *Re Stelco. Inc.*, CB 62
- *GE Canada Equipment Financing GE v. ING Insurance Company of Canada*, CB 67

(c) Interests in real property

- *Re Urman*, CB 76

## **3. Basic terminology**

OPPSA s. 1(1) (definitions below)

(a) “Debtor”

(b) “Secured party”

(c) “Collateral”



# **TOPIC 3: VALIDITY AND ENFORCEABILITY, ATTACHMENT AND PERFECTION**

## **1. Validity of security agreement**

### **(a) Effectiveness of agreement**

OPPSA ss.9(1), 73

- *Ellingsen*, previously discussed (Topic 2, Section 1(a))
- *MacEwen Agriculture Centre Inc. v. Beriault*, CB 101

### **(b) Writing requirements (see further Section 2 (Attachment), below)**

OPPSA ss 11(2)(a).

- *Atlas Industries v Federal Business Development Bank*, CB 109

### **(c) Copy of security agreement**

OPPSA, s.10

## **2. Attachment**

OPPSA s.11

### **(a) What attachment means**

### **(b) The requirements for attachment**

- (i) Agreement
- (ii) Value
- (iii) Debtor has rights in collateral

- *994814 Ontario Inc. v. RSL Canada Inc.* , CB 90

(iv) Exception – “unless the parties have agreed to postpone”

### **(c) After-acquired property**

OPPSA, s.12

**(d) The floating charge**

CB Commentary 115-117

- *Access Advertising Management Inc v Servex Computers Inc*, CB 117
- *Credit Suisse Canada v 1133 Yonge Street Holdings*, CB 120 (trial judgment)

**(e) The “all PAAP” security interest and the licence to carry on business**

CB 467-468

- *Credit Suisse Canada v 1133 Yonge Street Holdings*, CB 130 (appeal judgment)
- *Royal Bank of Canada v Sparrow Electric Corp.*, CB 135

**(f) Conditional sales and the like; debtor’s “rights in the collateral”**

- *Kinetics Technology International Corp. v Fourth National Bank of Tulsa*, CB 146

**3. Rights of parties to security agreement**

OPPSA, ss 13-18

**4. Perfection**

**(a) Introduction**

OPPSA, ss 19, 20, 22, 23  
CB Commentary 155-157

**(b) Perfection by possession**

OPPSA, s22

- *Re Raymond Darzinskas*, CB 157
- *Sperry Inc v CIBC*, CB 159

**(c) Perfection by registration**

OPPSA, s.23

**(d) Perfection by control**

OPPSA, s.22.1

- Cameron, “Secured Transactions Under Ontario’s Securities Transfer Act 2006), CB 166

**(e) Temporary perfection**

OPPSA, s.24

**(f) Continuity of perfection**

OPPSA, s.21

**(g) Consequences of non-perfection**

OPPSA s.20

CB 219-225

(i) Competing secured parties

(ii) Execution creditors

(iii) Debtor's trustee in bankruptcy

- *Re Giffen*, CB 176
- *1231640 Ontario Inc. (Re)*, CB 190

(iv) Transferees for value

- CB Commentary 199-202

## **TOPIC 4: REGISTRATION**

### **1. Introduction**

OPPSA, ss. 41-42

- Baird, “Notice Filing and the Problem of Ostensible Ownership”, CB 204

### **2. Basic concepts**

- CB Commentary 209-217

#### **(a) Notice filing**

#### **(b) Electronic registration systems**

#### **(c) Debtor’s name-based registration and serial number registration**

#### **(d) Exact match and close similar match retrieval systems**

### **3. The mechanics of registration**

OPPSA, ss. 1(1) “financing statement”, “financing change statement”

OPPSA Regulation and Minister’s Order, definitions of “person”, “artificial body”, “motor vehicle”, “vehicle identification number”, 2, 3, 16, 17

- CB Commentary 209-217

#### **(a) The financing statement**

#### **(b) The name and number requirements**

#### **(c) The financing change statement**

##### **(i) Amendments**

##### **(ii) Other types**

### **4. The mechanics of register search**

OPPSA ss 43, 43.1, 44

#### **(a) The search options**

##### *(i) Individual debtor’s name index*

- Specific searches
- Non-specific searches

(ii) *Business debtor's name index*

(iii) *Motor vehicle identification number (VIN) index*

**(b) Certified and uncertified (“verbal”) searches**

**(c) Search certificate contents**

**(d) Related search issues**

(i) *Used Vehicle Information Package (UVIP)*

(ii) *Repair and Storage Liens Act (RSLA)*

**(e) The Assurance Fund**

(i) The test in s.44(4)

- *Bank of Nova Scotia v Clinton's Flowers and Gifts Ltd.*, noted CB 217

(ii) The limitation on the Assurance Fund (ss.44(20) and (21))

(iii) The elimination of paper-based registrations and its impact on the foregoing

**5. Errors and omissions in financing statement**

- *Re Lambert*, CB 218
- CB Commentary 228-231
- *Coates v. General Motors Acceptance Corporation of Canada*, CB 231
- *Adelaide Capital Corp. v. Integrated Transportation Finance Inc.* CB 236

**6. Changes to registrations**

OPPSA, ss 47-50, 52-53

- *Heidelberg Canada Graphic Equipment Ltd. v Arthur Andersen Inc.*, CB 245

**7. Discharge of registration**

OPPSA, ss 55-57



## TOPIC 5: PRIORITY RULES

### 1. The general rules

OPPSA, s. 30

CB 239-242

#### (a) Introduction

#### (b) Policy considerations

- Jackson and Kronman, “Secured Financing and Priorities Among Creditors”, CB 256
- *James Talcott Inc. v. Franklin National Bank of Minneapolis*, CB 266

#### (c) Applications

### 2. Is notice relevant?

- *The Robert Simpson Company Limited v Shadlock and Duggan*, CB 242-244
- Baird and Jackson, “Information, Uncertainty and the Transfer of Property”, CB 263

### 3. Further advances

OPPSA, ss 13, 30(3), (4)

CB Commentary 272-274

#### (a) Introduction

#### (b) Applications

#### (c) Policy considerations

### 4. Reperfected security interests

OPPSA, s. 30(6)

CB Commentary 280-281

### 5. Subordination agreements

OPPSA, s.38

CB Commentary 282-283

#### (a) The privity issue

#### (b) The registration issue



**(c) Circular priorities**

- *Royal Bank of Canada v. General Motors Acceptance Corporation of Canada Limited* (Supp.)
- CB Commentary 290-294

## TOPIC 6: THE PURCHASE-MONEY SECURITY INTEREST PRIORITY

### 1. Introduction

OPPSA, ss. 33, 1(1) “purchase money security interest”

#### (a) The issue

#### (b) Policy considerations

(i) The new money theory

(ii) The situational monopoly theory

- Jackson and Kronman, “Secured Financing and Priorities Among Creditors”, CB 296

### 2. What is a purchase-money security interest?

- *North Platte State Bank v Production Credit Association*, CB 329
- *Agricultural Credit Corporation of Saskatchewan v Pettyjohn*, CB 301
- *Unisource Canada Inc. v. Laurentian Bank of Canada*, CB 305

### 3. Inventory purchase money security interests

OPPSA s.33(1)

- *Clark Equipment of Canada Ltd v Bank of Montreal*, CB 308
- *Chrysler Credit Canada Ltd. and Royal Bank of Canada*, CB 315

### 4. Non-inventory purchase money security interests

OPPSA s.33(2)

- *North Platte State Bank v Production Credit Association*, section 2 above
- *Brodie Hotel Supply Inc. v US*, CB 334

### 5. Competing purchase money security interests in the same collateral

OPPSA s.33(3)

### 6. Subordination agreements

- CB Commentary 337-340

## TOPIC 7: FIXTURES, ACCESSIONS & COMMINGLED GOODS

### (a) Introduction

### (b) Fixtures

OPPSA, ss. 34, 1(1) “goods”, “personal property”

#### (i) Introduction

#### (ii) What is a fixture?

- *Cormier v. Federal Business Development Bank*, CB 344
- *859587 Ontario Ltd. v. Starmark Property Management Ltd.*, CB 353

#### (iii) Priority of a security interest that attaches to goods before they become fixtures

#### (iv) Priority of a security interest that attaches to goods after they become fixtures

#### (v) Removal of collateral

### (c) Accessions

OPPSA ss. 35, 1(1) “accession”

#### (i) Introduction

#### (ii) What is an accession?

- *Industrial Acceptance Corp v. Firestone Tire & Rubber Co*, CB 359

#### (iii) The section 35 priority rules

#### (iv) Accessions and “repairs”

- *GMAC Leaseco Ltd. v. Tomax Credit Corp.*, CB 363

### (d) Commingled goods

OPPSA s.37

#### (i) Introduction

#### (ii) Continuation of security interest in product or mass

#### (iii) Competing security interests in commingled goods

- Grant Gilmore, *Security Interests in Personal Property*, CB 368

## **TOPIC 8: LIENS ARISING BY STATUTE OR RULE OF LAW**

### **1. Introduction**

OPPSA, s.4(1)(a)

### **2. Liens and competing security interests: the PPSA priority rules**

#### **(a) Introduction**

#### **(b) Liens and subordination of competing unperfected security interests**

OPPSA, s 20(1)(a)(i)

- *Leavere v. Port Colborne (City)*, CB 383

#### **(c) Liens for materials and services and competing security interests**

OPPSA s.31

- *General Electric Capital Equipment Finance Inc. v. Transland Tire Sales & Service Ltd.*, CB 378

### **3. Liens and competing security interests: common law solutions**

- *Leavere v. Port Colborne (City)*, above
- *Royal Bank of Canada v. Sparrow Electric Corp.*, CB 135
- *DaimlerChrysler Financial Services (debis) Canada Inc. v. Mega Pets Ltd.*, CB 389

## **TOPIC 9: TRANSFERS IN THE ORDINARY COURSE OF BUSINESS; RIGHTS TO FOLLOW PROCEEDS**

### **1. Introduction**

### **2. Sales in ordinary course**

OPPSA s.28(1) – (1.3)

#### **(a) Introduction**

#### **(b) “Buyer”**

CB Commentary 400-401

#### **(c) “Goods”**

- *Camco Inc. v. Olson Realty (1979) Ltd.*, CB 402
- *Agricultural Commodity Corp. v. Schaus Feedlots Inc.* noted CB 408

#### **(d) “Security interest... given by the seller”**

- CB Commentary 401-402

#### **(e) “Ordinary course of business”**

- *Camco*, above (esp. 383-388)

#### **(f) Requirement for “sale”**

- *Royal Bank of Canada v. 216200 Alberta Ltd.*, CB 414
- *Spittlehouse v. Northshore Marine Inc.*, CB 422
- *Tanbro Fabrics Corp. v. Deering Milliken Inc.*, CB 409

#### **(g) Knowledge**

#### **(h) Leases in ordinary course**

OPPSA, s.28(2) – (2.3)

### **3. Private sales of motor vehicles**

OPPSA, ss. 25(1), 20(1)(c), 28(5), 43.1



#### **4. Transfers of instruments and documents of title**

OPPSA ss. 28(4), 29, 1(1) “instrument”, “document of title”, “purchase”, “purchaser”  
Z&D §28.5 (pp.239-240); §29.1 (pp.244-245)

- Ziegel, “Perfection by Registration, Instruments, Securities, Documents of Title and the Personal Property Security Act 1989”, CB 430

##### **(a) “Introduction”**

##### **(b) “Purchaser” (cf. “buyer”)**

##### **(c) “Perfected by registration”**

##### **(d) The section 28(4) requirements**

- Value
- Without knowledge
- Possession

##### **(e) Sections 28(4) and 29**

#### **5. Transfer of investment property**

- OPPSA ss 28(6) – (10), s.28.1
- Securities Transfer Act 2006, S.O. 2006, c.8.
- Cameron, “Secured Transactions Under Ontario’s Securities Transfer Act, 2006”, CB 433

#### **6. Transfer of chattel paper**

OPPSA, ss 28(3), 1(1) “chattel paper”

- CB commentary, pp.426-429

#### **7. The right to follow proceeds**

##### **(a) Introduction**

- *Flintoft v. Royal Bank of Canada*, CB 442

##### **(b) Perfection of security interests in proceeds**

OPPSA ss 25(2)-(5), 30(5)

##### **(c) Tracing of proceeds**

OPPSA ss. 25(1), 1(1) “proceeds”

- *Agricultural Credit Corp. of Saskatchewan v. Pettyjohn*, CB 449
- *Flexi-Coil Ltd v. Kindersley District Credit Union Ltd*, CB 450-465
- Duggan, “Tracing, Canadian-Style”, CB 470



## **TOPIC 10: DEFAULT – RIGHTS AND REMEDIES**

### **1. Introduction**

**(a) Overview of OPPSA, Part V**

**(b) Prior law**

**(c) Other relevant laws**

### **2. Deemed security interests**

OPPSA, s.57.1

- *DaimlerChrysler Services Canada Inc. v. Cameron* noted CB 517-520

### **3. Notice before enforcement**

- *Waldron v Royal Bank*, CB p. 478
- *Bankruptcy and Insolvency Act*, s.244 (discussed CB 482)

### **4. Repossession upon default**

OPPSA, ss. 62, 17

- *R. v. Doucette*, CB 483

### **5. Disposal of collateral**

OPPSA, ss 63, 67(2)

**(a) The notice requirement**

**(b) Method of disposition**

**(c) Distribution of sale proceeds**

### **6. Secured party's collection rights: accounts, chattel paper, instruments**

OPPSA, s.61

### **7. Surplus, deficiency**

OPPSA ss.64, 1(1) "obligation secured"

### **8. Voluntary foreclosure**

OPPSA, s.65

### **9. Redemption and reinstatement**

OPPSA, s.66

## 10. Receivers

OPPSA, s.60

- *Standard Trust Co. v. Turner Crossing Inc.*, CB 508
- *Ostrander v. Niagara Helicopters Ltd.*, CB 512

## 11. Contracting out

OPPSA, s.59.

## TOPIC 11: CONFLICT OF LAWS

### 1. Introduction

### 2. Security interests in goods – initial validity and perfection

OPPSA, s.5(1)

### 3. Relocation of goods to Ontario

OPPSA, s.5(2)-(4)

- *Re Adair; Re General Motors Acceptance Corporation*, CB 531

### 4. Revendication

OPPSA, s.5(5)

### 5. The destination of goods rule

OPPSA, s.6

### 6. Security interest in intangibles and mobile goods

OPPSA, s.7

- *Gimli Auto Ltd. v. BDO Dunwoody Ltd.*, CB 541

### 7. Enforcement of security interests

OPPSA, s.8

- *Cardel Leasing Ltd. v. Maxmenko*, CB 548

## TOPIC 12: THE BANK ACT SECURITY INTEREST

### 1. Introduction

### 2. Overview of the *Bank Act* s.427 scheme

- Wood, “The Nature and Definition of Federal Security Interests”, CB 554
- *Royal Bank of Canada v. Sparrow Electric Corp.*, CB 556

### 3. Relationship between *Bank Act* s.427 and PPSA

- *Innovation Credit Union v. Bank of Montreal*, CB 558
- *Radius Credit Union Limited v. Royal Bank of Canada*, CB 565
- *Bank of Nova Scotia v. International Harvester Credit Corp.*, CB 571

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